

## Steve Leimberg's Asset Protection Planning Email Newsletter Archive Message #346

Date:24-Jul-17

### Subject: Jeff Baskies on *Ramos v. Motamed* - Gym Records Blow Up Bogus Asset Protection Plan in a Novel Florida Homestead Exemption Case - Bad Facts Case Provides a Good Reminder that Effectively Changing Domicile Is Not a Game

*“In a novel Florida homestead case, a debtor’s claim to a homestead exemption (from his creditors’ claims) was denied when the evidence in trial (including his gym records) belied his claim of being a Florida resident.*

*It is well known and well established that debtors can (i) move to Florida, (ii) invest in a homestead residence and (iii) claim the benefits of the Florida homestead exemption, even if they do so with the intent to avoid creditors. That’s not a new issue. However, the landmark aspect to this case/ruling is that it is one of the only cases (perhaps the only known one) where the debtor was denied the benefits of the homestead exemption because he didn’t really move to Florida, even though he presented the other indicia of changed domicile. While there are numerous cases from other jurisdictions (usually state income tax cases) concluding a taxpayer did not change domicile to Florida (and thus was still a tax resident in the other state), this is a unique ruling as a Florida case deciding someone failed to adequately demonstrate changed domicile.*

*The case is a good reminder that the Florida homestead exemption is only afforded to Florida residents, and is also a good reminder that effectively changing domicile is not a game; it means more than filling out a few forms.”*

**Jeff Baskies** provides members with fascinating commentary on [\*Ramos v. Motamed\*](#).

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Here is his commentary:

## **EXECUTIVE SUMMARY:**

When Dr. Michael Motamed, a California resident, was sued for negligence following an automobile accident with a pedestrian, he bought a \$1.5 million condo in Palm Beach, Florida and claimed his interest in the property was exempt from his multi-million-dollar judgment creditor. While the debtor apparently did obtain a Florida driver's license, library card and voter registration card, and he did apply for a homestead ad valorem tax exemption, evidence at trial (including gym records indicating he worked out at his usual gym in California 300/365 days in 2015) demonstrated he didn't actually move to Florida and the facts presented at trial ultimately undid his claim for exemption.

As a result of the trial court concluding Motamed did not make his Florida condo his primary residence, the Florida Constitution's exemption from forced sale was not applied, and a judicial sale of his condominium is scheduled for August.

## **FACTS:**

According to the public records of Palm Beach County, Florida, on January 13, 2015, Michael Motamed, purchased a condominium at 3120 S. Ocean Blvd (unit 1-503) in Palm Beach, Florida. He paid \$1,505,000. And he applied for a homestead ad valorem tax exemption (that was granted and applied on his 2016 tax bill – although one wonders if the property appraiser may seek to redress that benefit now).

As reported in the [Daily Business Review](#), Motamed was a California resident and retired dentist, who purchased the condo on the eve of a trial in which he was the named defendant. Motamed was sued

following an automobile accident where he hit a pedestrian. Ultimately, a \$2.2 million judgment was issued against Motamed.

It was reported that Motamed not only claimed the homestead ad valorem tax exemption, but also obtained a Florida driver's license, library card and voter's registration card, all claiming to be a resident as of early 2015.

However, the creditor sought to enforce her judgment in 2017 and ultimately proved to the Palm Beach County Circuit court that Motamed did not really make the Florida condo his primary residence, and thus should not be entitled to exempt the property from forced sale to satisfy the judgment.

It was reported by the attorneys representing the creditor that they subpoenaed Motamed's records from the Equinox gym, which showed he worked out at the Equinox gym in California for 300 days during 2015. Showing he checked into the gym and exercise classes in California 300/365 days bolstered the creditor's case and helped show the debtor was not really a resident of Florida and thus was not entitled to the homestead exemption.

## COMMENT:

As fellow [LISI](#) commentator **Jay Adkison** has reported many times, debtors trying to hide (protect) assets after a claim arose (in this case after a suit has been filed) has nothing to do with valid asset protection planning – such “planning” doesn't belong in the same discussion.

And this case presents another example of such. When debtors seek to hide assets after a suit has been filed, invariably it appears bad results follow.

However, in Florida (unlike in the other cases Jay has reported on), there is an exception to the general rule against fraudulent transfers. At least since the Havoco decision in 2001, it is the law of Florida that the transfer of available assets into an exempt homestead (even if done with the intent to hinder, delay or defraud creditors) is permissible and will not be set aside as a fraudulent conversion or transfer, except in very limited circumstances. The constitution defines three exceptions, and a fourth exception (referred to as the “equitable lien” doctrine) has developed by

case law. Generally, the equitable lien doctrine has been applied where the funds used to purchase or pay down the mortgage on the homestead were derived from fraudulent activity or egregious conduct, e.g. if you steal \$100,000 from me and use it to buy a homestead, and I prove those facts, then you can't use the homestead exemption to protect you from my claim against you.

The logic supporting the Havoco holding is that the Florida constitution (Article X, Section 4) exempts homesteads and describes the limited exceptions to this protection, and absent the application of the equitable lien doctrine, the fraudulent transfer and fraudulent conveyance statutes cannot override the constitutional protection.

There are not many cases where the homestead exemption is not applied, and the reported cases typically related to the application of the equitable lien doctrine. On the other hand, the Motamed case is an example where the homestead exemption was not applied, but without the application of any of the three Constitutional exceptions or the equitable lien doctrine.

That's why the Motamed case is novel and so interesting: it addresses an issue that is rarely acknowledged by Florida courts – whether the homestead exemption is available to people who present indicia of residency (driver's license, application for homestead tax benefits, etc) but perhaps never really changed domicile? I don't recall reading many similar holdings before. Thus, Motamed appears a novel holding and a statement on a unique issue, but perhaps one where future litigation will take place. After all, the Motamed case does not tell us just how many days one must be in Florida (or how few days one must go to the gym in California), in order to qualify for the homestead protections.

Changes to the bankruptcy laws pose other threats to the homestead exemption if a debtor is forced into bankruptcy. However, this is one of the rare cases where a claim for homestead protection failed in state court.

## **Lessons**

A few lessons can be gleaned from the Motamed case.

First, (i) if you wish to move to a new state, (ii) if you wish to claim to be a resident of the new state, and (iii) if you want to seek the benefits of residency in the new state, then you ought to actually move there! It isn't enough to "fake it" and merely go through the motions.

Second, this case is an obvious reminder about karma. While Motamed's non-stop visits to the gym ultimately proved he was a California resident, apparently the workouts didn't have the intended health benefits. It was reported that Motamed died in July 2016 – of hypertension!

Finally, the lesson advisors and planners can take from this case (and can share with their clients) is: changing domicile to claim tax or other benefits (including the famous homestead exemptions in Florida) is not a game; it is not a joke. If you are not really changing domicile then you should not claim you are - as there are many potentially adverse consequences. On the other hand, if you really intend to change your domicile, then be sure you spend enough time in your new state of domicile to evidence that intent.

**HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!**

*Jeff Baskies*

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**CITE AS:**

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## CITES:

[Ramos v. Motamed](#), was reported in “*Should Have Skipped Leg Day: Gym Records Crush Defendant’s Protection Against \$2.2 million Judgment*”, The Daily Business Review, an ALM Publication, Vol. 63, No. 190 (July 11, 2017); *Havoco of America, Ltd v. Hill*, 790 So. 2d 1018 (2001); Leading equitable lien case are Palm Beach Savings & Loan Ass’n v. Fishbein, 619 So.2d 267,270 (Fla.1993); and In re Gosman, 362 BR 549, 553-554 (Bkrcty. S.D.Fla. 2007).